

### **REMARKS/ARGUMENTS**

Claims 1, 3-5, 10-22, 25-28, 30-32, 34-40, and 78-80 are pending. Claims 2, 6-9, 23, 24, 29, 33, and 41-77 were previously canceled.

According to the Office Action Summary, claim 79 is allowable and claims 1, 3-5, 10-22, 25-28, 30-32, 34-40, 78, and 80 are rejected. Applicants believe the Summary inadvertently listed claims 37-40 as "rejected" and instead they should be "allowed. Claims 37-40 were previously indicated as allowed in the Office Action of March 26, 2007, and the instant Office Action does not address these claims in the Detailed Action. Hence, Applicants will treat claims 37-40 as allowed. If this is incorrect, clarification is respectfully requested. In this Amendment, claims 30 and 80 is amended. No new matter is introduced. Reconsideration of the rejected claims is respectfully requested.

#### **First Rejection Under 35 U.S.C. §112**

Claim 80 was rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement. This rejection is overcome as follows.

At page 3, the Office Action alleges that claim 80 lacks enablement because the tumor cells may not be part of a tumor. Amended claim 80 indicates that the cancer tumor cells form part of a tumor. Withdrawal of this rejection is respectfully requested.

#### **Second Rejection Under 35 U.S.C. §112**

Claim 30 was rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. This rejection is overcome as follows.

The Amendment filed June 26, 2007 contained inadvertent clerical errors. Claim 30 did not show the underlining showing the amendment, and the status identifier was incorrect. The underlining and the status identifier are properly shown in the instant Amendment. Withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. §102

Claims 1, 3, 10, 18-22, 25-28, 31, 32, 78, and 80 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,262,032 to Tocque. This rejection is traversed.

At page 5, the Office Action alleges that neither of U.S. Provisional Patent Application Nos. 60/038,065 and 60/047,834, filed February 18, 1997 and May 28, 1997 respectively, disclose *in vivo* treatment of tumors using an adenoviral vector comprising a nucleic acid encoding p53 and a taxane. Applicants disagree.

The '065 application discloses *in vivo* treatment at, for example, page 28, line 22 to page 30, line 20. Combination treatment with an adenoviral vector having a nucleic acid encoding p53 and a taxane is disclosed at, for example, page 3, lines 3 to page 4, line 10. Page 4 lines 3-7 provides specific disclosure of combination therapy *in vivo*. For at least these reasons, and for reasons previously made of record, Applicants submit that Tocque is not a proper §102(e) reference. Withdrawal of this rejection is respectfully requested.

First Rejection Under 35 U.S.C. §103

Claims 1, 10-17, and 34 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Tocque in view of U.S. Patent No. 5,932,210 to Gregory et al. This rejection is traversed.

According to MPEP 2141.01(I), before answering Graham's content inquiry, it must be known whether a patent or publication is a proper §102 reference. As indicated above, Tocque is not a proper §102(e) reference, and therefore does not support the §103 rejection.

The instant application was filed 2/28/02, and claims priority to provisional application no. 60/038,065 filed 2/18/97. Gregory published 8/3/99; the filing date is not relevant to the §102 analysis underpinning the §103 rejection. At the time the presently claimed invention was made, it was owned or subject to an obligation of assignment to Canji, Inc., and Gregory was owned or subject to an obligation of assignment to Canji, Inc. Hence, Gregory shall not preclude patentability because of the common ownership provisions of 35 U.S.C. §103(c). Withdrawal of this rejection is respectfully requested.

Second Rejection Under 35 U.S.C. §103

Claims 1, 4, and 5 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Tocque in view of Roth et al. "*Gene therapy for cancer: what have we done and where are we going?*" Journal of the National Cancer Institute, Jan. 1;89(1):21-39 (1997) and Shea "*High-dose carboplatin plus paclitaxel with granulocyte colony-stimulating factor and peripheral blood stem-cell support in non-small-cell lung cancer*" Cancer Chemotherapy and Pharmacology, 40 Suppl:S74-8 (1997). This rejection is traversed.

According to MPEP 2141.01(I), before answering Graham's content inquiry, it must be known whether a patent or publication is a proper §102 reference. As indicated above, Tocque is not a proper §102(e) reference, and therefore does not support the §103 rejection. Withdrawal of this rejection is respectfully requested.

As noted in the March 26, 2007 Office Action at page 13, Tocque does not teach a step of including a third chemotherapeutic agent. Further, the third chemotherapeutic agent is recited in claims 4 and 5, but not in claim 1. Hence, the reliance upon Roth and Shea for a description of a third chemotherapeutic agent is relevant only to claims 4 and 5. Put differently, Roth and Shea are alleged to remedy the deficiency of Tocque with regard to claims 4 and 5 by describing a third chemotherapeutic agent. Roth and Shea are not cited to remedy any deficiency of claim 1. Thus, it is submitted that Roth and Shea are not relevant to claim 1, which does not require the third chemotherapeutic agent. In sum, this rejection should be asserted against only claims 4 and 5, and not claim 1.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

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Examining Group 1632

PATENT

Respectfully submitted,

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